**Homemaker Shops, Inc. *and* Retail Store Employees Union, Local 876, United Food and Commercial Workers International Union, AFL–CIO–CLC, and Homemaker Shops Representative Committee, Party in Interest.** Case 7–CA–17116

April 29, 1982

## DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

On November 7, 1980, Administrative Law Judge William A. Gershuny issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief. Respondent filed a brief in opposition to the General Counsel's brief and in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

1. The General Counsel has filed exceptions to the Administrative Law Judge's failure to find that Respondent violated Section 8(a)(2) of the Act by dominating, assisting, contributing to the support of, and interfering with the administration of a labor organization, the Homemaker Shops Representative Committee (hereafter called the Committee). We find merit in these exceptions.

The basic facts are not in dispute. Respondent operates a retail store chain selling linens and other related household goods in six States. Its 32 stores are divided into 3 bargaining units. Group I, the unit involved here, encompasses 16 stores.[1] The Committee was certified by the Board on October 22, 1976, as the bargaining representative of a unit of all full-time and regular part-time selling and nonselling employees at all Respondent's Group I stores. There is no evidence of involvement by Respondent in the formation of the Committee.

The Committee is an unincorporated body, without a charter, bylaws, or governing rules. It conducts no general membership meetings, has no regular officers, and makes no provision for the payment of dues. The Committee's operational procedures are contained in its contract with Respondent. The current contract, which expires in January 1983, provides for one representative and one alternative from each store to be elected annually in May by secret ballot. The length of the representatives' terms was initially set at 1 year at the preference of Respondent's president, Freeland. The contract provides that the Employee Negotiating Committee shall be elected by the store representatives and recognizes the Employee Negotiating Committee for the purpose of bargaining about wages, hours, and conditions of employment. It also establishes a four-step grievance procedure with provisions for participation by the store representatives and for employees and Respondent to share the cost of any arbitration.[2] Finally, the contract provides for compensation to the representatives for time lost from work during meetings with Respondent and when participating in the grievance procedure.

Respondent schedules both regular and special elections for the Committee's representatives. For example, in August or September 1979, Plant Supervisor Himes independently called a special meeting for the purpose of electing a store representative because the current representative was on extended medical leave. Respondent also provides the ballots and ballot box for the elections. The store manager passes out the ballots and for a time keeps the ballot box at his desk. Then, with an employee's assistance, he counts the ballots and announces the results. At the May 1979 election meeting, an employee attempt to amend the method of selecting alternate representatives was vetoed by Plant Manager Laughead.[3]

Only Respondent schedules and, if necessary, reschedules the annual and special meetings it has with the Committee. Regular meetings, usually held in the fall of each year, serve the two purposes of discussing new merchandise and company sales policy, and negotiating the terms and conditions of employment. The Committee's representa-

[1] On November 2, 1979, the Charging Party, Retail Store Employees Union, Local 876, United Food and Commercial Workers International Union, AFL–CIO–CLC (hereafter called the Union), filed a representation petition covering nine of the stores in Group I. The underlying charge in this case was filed on November 26, 1979. We find merit to the General Counsel's contention that the Administrative Law Judge erroneously stated that the General Counsel seeks relief from the alleged unfair labor practices only at the 9 stores of the 16 stores listed in the representation petition. The record shows that the General Counsel seeks to restrain the alleged unfair labor practices at all 16 stores in Group I.

[2] Evidence was presented that the Committee's representatives have processed two informal grievances within the 10(b) period.

[3] The charge here was filed on November 26, 1979. It is unclear whether this May 1979 meeting occurred within the 10(b) period. We, accordingly, rely on this and other instances predating the 10(b) period for background purposes only. It is well settled that the Board can and will consider events transpiring more than 6 months before the filing of a charge to shed light on the true character of matters occurring within the limitations period, even though under Sec. 10(b) such conduct cannot itself constitute an unfair labor practice. *Local Lodge No. 1424, International Association of Machinists, AFL–CIO, et al. [Bryan Manufacturing Company]* v. *N.L.R.B.*, 362 U.S. 411 (1960). See also *N.L.R.B.* v. *Southern Bell Telephone & Telegraph Co.*, 319 U.S. 50, 57 (1943).

tives have met among themselves only prior to these regular annual or special meetings. No members of management are present at these preliminary meetings where, pursuant to the contract, the representatives select an Employee Negotiating Committee to meet with Respondent and present the Committee's demands. Respondent reimburses the representatives for travel expenses to the meetings. It pays the representatives their regular hourly wages both while in attendance at the preliminary meetings and, pursuant to the contract, at the negotiation meetings. Respondent also provides the Committee with temporary facilities and coffee for these preliminary meetings.

At the November 1979 negotiations for the current contract with Respondent, the Committee's representatives presented their demands one by one. Uncontradicted testimony shows that Respondent summarily granted or denied each demand. Respondent offered no counterproposals. Although Respondent granted some demands in compromised form, the parties did not engage in the usual back-and-forth negotiation of terms that customarily accompanies the process of collective bargaining. The Committee did not try to obtain any proposals by giving up other proposals, nor did it insist that any proposal was mandatory. Demands denied were usually immediately dropped by the Committee's representatives. Committee demands granted included increased insurance benefits, dental insurance, a cost-of-living provision, a wage increase, and funeral leave.

On November 30, 1979, Respondent called the Committee to a special meeting, attended by Respondent's attorney, to discuss with Group I representatives the filing of the charge in this case, the petition by Local 876, and the propriety of bargaining over a new contract covering the nine stores of Group I covered by the petition. At this meeting, the store representatives were told that they could call Respondent's attorney if they had any questions, that he would represent them if they desired, and that they had the right to retain their own attorney if they preferred. Respondent made no request, promise, or suggestion that it would pay for whatever attorney the Committee retained.

On the basis of the above record, the Administrative Law Judge found that Respondent did no more than lawfully cooperate with the Committee. The General Counsel, while acknowledging that the Board has no *per se* rule with regard to unlawful assistance or domination, contends in exceptions that Respondent's involvement in the Committee's internal affairs exceeds the permissible level of cooperation between an employer and a labor organization and amounts to unlawful domination and assistance.[4] We agree, and, contrary to the Administrative Law Judge, we find that Respondent has violated Section 8(a)(2) and (1) of the Act by dominating,[5] assisting, contributing to the support of, and interfering with the administration of the Committee.

In making these findings, we note that the difference between unlawful assistance and unlawful domination is one of degree,[6] as is the difference between permissible cooperation and unlawful assistance.[7] Where, as here, the totality of evidence shows that the labor organization exists essentially at the will of the employer, we are compelled to find that the employer has engaged in both unlawful assistance and domination.[8] We also note that the employer's activity in the formation of a labor organization is not a prerequiste to a finding of domination in the administration of a labor organization.[9]

In finding unlawful assistance and domination, we rely on the collective import of the following factors: (1) The Committee has no charter, bylaws, or governing rules, no regular officers, and no provision for the payment of dues.[10] (2) The only body of rules governing the operation of the Committee is contained in the bargaining agreement between Respondent and the Committee.[11] (3) Respondent

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[4] See, e.g., *Federal Mogul Corporation, Coldwater Distribution Center Division*, 163 NLRB 927, 928, fn. 4 (1967), enforcement denied 394 F.2d 915 (6th Cir. 1968).

[5] Respondent contends that, because unlawful domination is not alleged in the complaint or amended complaint, we should decline to find this violation. The amended complaint (par. 12) alleges:

> Since on or about May 26, 1979, and continuing to date, Respondent has rendered and is rendering unlawful aid, assistance and support to the Homemaker Shops Representative Committee by scheduling and controlling the election of Committee representatives; by calling, attending and directing meetings of Committee representatives, and compensating representatives to attend these meeting; and by providing financial assistance to the Committee by offering legal assistance and by allowing the Committee to use its offices, equipment, facilities, and supplies to conduct Committee business.

We find that these allegations are sufficient to bring the issue of domination within the scope of the complaint. See *Fremont Manufacturing Company, Inc.*, 224 NLRB 597 (1976), enfd. 558 F.2d 889 (8th Cir. 1977).

In addition, where a material issue of unlawful conduct related to the subject matter of the complaint has been fully litigated and the facts necessary to decide the question have been adduced without objection by Respondent, the Board is not precluded from deciding the issues, regardless of whether it has been specifically pleaded. See *Kux Manufacturing Corporation, etc.*, 233 NLRB 317 (1977), enforcement denied in relevant part 614 F.2d 556 (5th Cir. 1980).

[6] *Harold W. Koehler, Harold C. Koehler and Jerry Koehler, a partnership d/b/a Koehler's Wholesale Restaurant Supply*, 139 NLRB 945, 953 (1962), enfd. in relevant part 328 F.2d 770 (7th Cir. 1964).

[7] See, e.g., *Sunnen Products, Inc.*, 189 NLRB 826, 828 (1971).

[8] See *Kux Manufacturing Corporation, supra.*

[9] See *Goulds Pumps Inc., Vertical Pump Division*, 196 NLRB 820, 824 (1972).

[10] See *Clapper's Manufacturing, Inc.*, 186 NLRB 324, 334 (1970), enfd. 458 F.2d 414 (3d Cir. 1972).

[11] See *Federal Mogul Corporation, Coldwater Distribution Center Division, supra* at 928; *Modern Plastics Corporation*, 155 NLRB 1126, 1128 (1965), vacated 379 F.2d 201 (6th Cir. 1967).

exercises sole authority to schedule annual and special meetings with the Committee and the Committee's representatives only meet prior to these scheduled meetings with Respondent. (4) Respondent plays a substantial role in determining and overseeing the Committee's internal election procedures. (5) The most recent contract negotiations were not characterized by arm's-length bargaining. Respondent summarily accepted, rejected, or compromised the Committee's requests, without further counterproposals.[12] (6) There is minimal evidence of grievance handling by the Committee. (7) The Committee's representatives are paid their regular hourly wages plus travel expenses for their participation in all Committee functions. (8) Respondent provides free temporary facilities and coffee for the Committee's pre-negotiation meetings. (9) Respondent offered the Committee the services of its attorney on November 30, 1979.[13]

On the basis of the foregoing, we find that Respondent, since May 26, 1979, has provided assistance and support to the Homemaker Shops Representative Committee, and has dominated the administration of the Committee, in violation of Section 8(a)(2) and (1) of the Act.[14]

2. The General Counsel has also excepted to the Administrative Law Judge's failure to find three separate violations of Section 8(a)(1) of the Act. We find merit in these exceptions.

Employee and Committee Representative Brown testified that in early January 1980 she made a personal call, unrelated to union business, on a company telephone. Respondent's store manager, Chene, stood approximately 1 to 1-1/2 feet away from her during this call. According to Brown, when she finished the call she turned and asked Chene whether he was "baby-sitting her." Chene answered that he had been instructed by Respondent's president, Freeland, to find out to whom Brown spoke on the telephone and to inform him of all calls relating to Local 876. Brown testified that she considered the matter a "kind of joke," but that Chene was "very serious in what he was saying." Chene, given an opportunity at the hearing to deny the alleged conversation, instead testified that it was "very possible" the conversation took place but did "not recall the exact wording." We credit Brown's uncontroverted testimony and find that Chene created the unlawful impression of surveillance, in violation of Section 8(a)(1) of the Act.[15]

We also find that Respondent's store manager, Laughead, engaged in unlawful interrogation of Gingrich, a Committee representative. Gingrich testified that early in 1980 Laughead asked her if she knew anything about the union activity and from what store it might be coming. She replied to Laughead that she had no idea and would not tell him even if she knew. According to Gingrich, Laughead's questions were casual and occurred on the sales floor. Laughead denied the conversation. The Administrative Law Judge did not explicitly credit either witness but found that the conversation was "innocuous at best." From this, we conclude that he has implicitly credited Gingrich's testimony that the conversation occurred.[16] We disagree with the Administrative Law Judge's characterization of this conversation and find that Laughead unlawfully interrogated Gingrich in violation of Section 8(a)(1) of the Act.[17]

Finally, we find that Respondent's store manager, Himes, engaged in unlawful interrogation of employee and Committee Representative Kelly. Kelly testified that Himes asked her on November 1, 1979, if she had met with any Local 876 representatives that day and that she told him "yes." She later overheard Himes relay her response to Freeland on the telephone and asked Freeland if there was anything he should ask Kelly. Kelly further testified that Himes approached her later that day and asked her what demands the employees were going to make. She gave a vague reply, mentioning a possible wage increase and medical or dental insurance. Himes corroborated Kelly's testimony.

The General Counsel sought to further amend the complaint at the hearing to include an allegation of 8(a)(1) interrogation by Himes. The Administrative Law Judge initially struck the testimony of the General Counsel's witness at the hearing but permitted Respondent to present its witness and litigate the issue, in case the Board chose to reverse his denial of the motion, or denial of the motion of his Decision. However, because this allegation was

[12] See *Kux Manufacturing Corporation, supra* at 320, 323. See also *Reed Rolled Thread Die Co., subsidiary of UTD Corporation*, 179 NLRB 56, 63 (1969), enfd. in relevant part 432 F.2d 70 (1st Cir. 1970). Cf. *Newman-Green, Inc.*, 161 NLRB 1062, 1067 (1966), enfd. as modified 401 F.2d 1 (7th Cir. 1968), in which the Board declined to find unlawful domination where there was evidence of insistent bargaining by the labor organization and successful processing of grievances.

We find no merit to Respondent's argument that the presence of favorable terms in the contract precludes a finding of unlawful domination or assistance. See *N.L.R.B.* v. *Newport News Shipbuilding & Dry Dock Co.*, 308 U.S. 241 (1939). See also *Alta Bates Hospital*, 226 NLRB 485, 491 (1976).

[13] We do not find determinative that it was not clear from the offer who would be paying for the attorney's services. See *Duquesne University of the Holy Ghost*, 198 NLRB 891, 900 (1972).

[14] See *Goulds Pumps, Inc., supra.*

[15] See, e.g., *Sports Coach Corporation of America*, 203 NLRB 145, 152 (1973).

[16] We note that Respondent's brief in opposition to the General Counsel's exceptions does not deny that the conversation took place but contends that, as the Administrative Law Judge found, it was innocuous.

[17] See, e.g., *Isaacson-Carrico Manufacturing Company*, 200 NLRB 788 (1972).

fully litigated and is closely related to other allegations in the complaint we grant the motion to amend and admit the disputed testimony into the record.[18] Further, we find that Himes' conduct constituted an unlawful interrogation in violation of Section 8(a)(1) of the Act.

## CONCLUSIONS OF LAW

1. The Respondent, Homemaker Shops, Inc., is an employer within the meaning of Section 2(2) of the Act, engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Retail Store Employees Union, Local 876, United Food and Commercial Workers International Union, AFL–CIO–CLC, and Homemaker Shops Representative Committee are both labor organizations within the meaning of Section 2(5) of the Act.

3. By coercively interrogating employees about union activities in order to discourage union membership and activities; and by the creation of the impression of surveillance of union activities, Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed them in Section 7 of the Act, and has thereby engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By dominating, assisting, supporting, and interfering with the operation and administration of the Homemaker Shops Representative Committee, Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(2) and (1) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, we shall order Respondent to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Because Respondent has dominated, and interfered with, the administration of the Party in Interest, Homemaker Shops Representative Committee, and has contributed support thereto, it will be recommended that Respondent be ordered to cease and desist from such conduct and that it withdraw recognition from and completely disestablish the Committee as the representative of any of Respondent's employees in Respondent's 16 stores in Group I for the purposes of dealing with Respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work.

## ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Homemaker Shops, Inc., Lathrup Village, Michigan, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Coercively interrogating employees about union activities.

(b) Creating the impression of surveillance of union activities.

(c) Dominating, supporting, assisting, or interfering with the operation and administration of the Homemaker Shops Representative Committee or any other labor organization.

(d) Recognizing, or in any manner dealing with, the Homemaker Shops Representative Committee, or any reorganization or successor thereof, as the representative of all full-time and regular part-time selling and nonselling employees in Respondent's 16 Group I stores, which constitute the Group I bargaining unit.

(e) Giving effect to or enforcing the collective-bargaining agreement covering employees in the Group I bargaining unit and executed on January 2, 1980, with the Homemaker Shops Representative Committee, or to any renewal, extension, modification, or supplement of said agreement; provided, however, that nothing herein shall be construed to require Respondent to vary or abandon any existing term or condition of employment.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from the Homemaker Shops Representative Committee as the representative of its employees in the Group I bargaining unit for the purpose of dealing with Homemaker Shops, Inc., concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work and completely disestablish the Homemaker Shops Representative Committee as such representative; provided, however, that nothing in this Order shall require Respondent to vary or abandon any wages, hours, or other substantive benefits as a result of discussions with the Homemaker Shops Representative Committee, or to prejudice the assertion by its employees of any

[18] See, e.g., *Alexander Dawson, Inc. d/b/a Alexander's Restaurant and Lounge*, 228 NLRB 165, 165–166 (1977), enfd. 586 F.2d 1300 (9th Cir. 1978).

rights they derived as a result of such discussions; and further provided that nothing herein shall be construed as prohibiting its employees from forming, joining, or assisting any labor organization.

(b) Post at its Group I stores in the State of Michigan copies of the attached notice marked "Appendix."[19] Copies of said notice, on forms provided by the Regional Director for Region 7, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Repondent to insure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 7, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

[19] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

WE WILL NOT interrogate our employees coercively about their activities on behalf of Local 876, United Food and Commercial Workers International Union, AFL–CIO–CLC, or any other labor organization.

WE WILL NOT give our employees the impression that we are engaging in surveillance of their union activities.

WE WILL NOT dominate, support, assist, or otherwise interfere with the operation and administration of the Homemaker Shops Representative Committee or any other plant committee or labor organization of our employees.

WE WILL NOT recognize, or in any manner deal with, the Homemaker Shops Representative Committee, or any reorganization or successor thereof, as a representative of our employees employed in our Group I stores, for the purpose of dealing with Homemaker Shops, Inc., concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work.

WE WILL NOT give effect to our January 2, 1980, collective-bargaining agreement with the Homemaker Shops Representative Committee with respect to employees employed in our Group I stores or to any renewal, extension, modification, or supplement thereof; provided, however, that nothing herein shall be construed to require that we vary or abandon any existing term or condition of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed by Section 7 of the Act.

WE WILL withdraw all recognition from the Homemaker Shops Representative Committee as a representative of our employees employed in our Group I stores for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of work, and completely disestablish the Homemaker Shops Representative Committee as such representative.

### HOMEMAKER SHOPS, INC.

## DECISION

### STATEMENT OF THE CASE

WILLIAM A. GERSHUNY, Administrative Law Judge: A hearing was held on September 2, 1980, in Detroit, Michigan, on an amended complaint issued August 12, 1980, alleging violations of 8(a)(1) and (2) of the National Labor Relations Act, as amended, herein called the Act. Respondent's answer denies any violation of the Act.

At issue is whether Respondent unlawfully has rendered aid, assistance, and support to the Homemaker Shops Representative Committee (hereafter called the Committee) and whether Respondent engaged in unlawful interrogation and surveillance.

Upon the entire record,[1] including my observation of witness demeanor, I hereby make the following:

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### I. JURISDICTION

The complaint alleges, the answer admits, and I find that Respondent, engaged in the retail sale of curtains, towels, sheets, and other goods, with annual sales in excess of $500,000 and annual interstate purchases valued in excess of $50,000, is an employer engaged in commerce within the meaning of the Act.

[1] Respondent's motion for correction of the transcript is granted. No post-hearing brief was filed by counsel for the General Counsel.

## II. LABOR ORGANIZATIONS INVOLVED

Both the Committee and the Retail Store Employees Union, Local 876, are labor organizations within the meaning of Section 2(5) of the Act.

## III. THE UNFAIR LABOR PRACTICES

### A. *The Unlawful Assistance and Support of the Committee*

The Committee, certified by the Board on October 28, 1976, following an election, is the bargaining representative for sales and nonsales personnel at Respondent's 32 retail stores in 6 States. Three bargaining units have been established: Group I, the subject of this proceeding, covers 16 stores; Groups II and III cover 8 stores each.

On November 2, 1979, Local 876 filed a representation petition covering only 9 of the 16 stores in Group I. Its charge was filed on November 26, 1979. While this proceeding, of course, concerns only the alleged unfair labor practices, it is noteworthy that counsel for the General Counsel seeks to restrain Respondent's recognition of the Committee only insofar as these nine stores are concerned. If relief is granted, the dominated Committee would continue to function as a labor organization at all other stores.

The Committee is an unincorporated entity, with no charter, constitution, bylaws, or other governing rules. It has no regular officers or dues structure and conducts no general membership meetings.

There is no evidence of Respondent's involvement in its formation. The Committee was not recognized and there was no rival union claim at the time. The Committee functions through a committee comprised of one representative from each store, elected annually in accordance with a bargained-for provision of the contract. The representatives gather for the first time immediately prior to the regular annual or special meetings called by management and select spokespersons to meet with Respondent. Representatives are provided with coffee and temporary basement facilities for their preliminary meeting and, in accordance with the labor agreement, are reimbursed by Respondent for travel expenses and are paid their regular hourly wages while in attendance. There is no management attendance at these meetings. Elections for store representatives are scheduled, and blank ballots are provided, by Respondent, but there is no evidence of employer interference in the selection of representatives. Ballot boxes often are kept on or near the store manager's desk and ballots are counted by employees in conjunction with the manager who announces the results.

Regular or special meetings are scheduled and rescheduled by Respondent. Regular meetings, usually held in the fall of each year, serve two purposes: to discuss new merchandise and company sales policy and to negotiate terms and conditions of employment. Two special meetings have been called since the Committee was certified: one, in October 1976, to discuss the Committee's initial contract demands; the other, on November 30, 1979, to discuss the effect of Local 876's petition. Minutes of the meetings are prepared, but no evidence was offered as to authorship.

The uncontroverted evidence clearly reflects a pattern of arm's-length bargaining with not ineffective results. Two 3-year contracts have been executed since 1977. The current contract, dated January 2, 1980, expires January 2, 1983. The contract, in usual form, contains a number of provisions noteworthy here: for the annual election of store representatives by secret ballot; for establishing the composition of the negotiating committee; for attendance without loss of pay at negotiating meetings and grievance meetings and for reimbursement of related costs; and for a four-step grievance-arbitration procedure under which the elected store representative has a participating role.

Negotiations for the current contract, described by Committee Spokesperson Harris, consisted of a discussion of demands presented by the three-member negotiating committee. A number of its demands (increased insurance benefits, dental insurance, cost-of-living provision, wage increase, and funeral leave) were met; others were compromised; and some rejected by Respondent.

There is no evidence that Respondent dictated the contract terms or declined to discuss Committee proposals.

At the November 30, 1979, special meeting called by Respondent and attended by its attorney to discuss with Group I store representatives the filing of the charge and petition and whether Respondent could bargain with the nine stores of Group I over a new contract, the store representatives were advised that they could call Respondent's attorney if they had questions; that they had a right to retain their own attorney; and that Respondent's attorney would represent them if they so desired. There was no request, promise, or suggestion that Respondent would pay for the services of any attorney retained by the employees' Committee.

There is no evidence of domination, actual or potential, of any Committee function and, indeed, the complaint does not allege and counsel for the General Counsel does not contend that the Committee is the victim of employer domination.

Thus, the question presented is whether employer assistance and support in the form of coffee for Committee representatives once or twice a year, temporary basement office facilities several hours a year, pay and travel expenses for attendance of infrequent meetings, and preparation of ballots are violative of Section 8(a)(1) and (2) of the Act and require withdrawal by Respondent of its recognition of the Committee as the exclusive bargaining representative of those employees at 9 of the 16 stores in bargaining Group I.

The Act does not prohibit all forms of employer assistance. Indeed, many today recognize the need for innovative and broader forms of labor-management cooperation and assistance. With increasing frequency—and with no fear of an impairment of Section 7 responsibilities—union negotiating demands include pay for grievance handling, permanent meeting rooms for conduct of union business, continued seniority for employees elected to salaried union positions, equity ownership of the business, and participation in traditional boardroom decisions.

Whether employer assistance is violative of the Act depends, of course, not on the nature of the assistance, but rather on its effect on the employees' retention of their freedom of choice and the representative's ability to maintain its independence in dealing with the employer. One particular form of assistance to a weak, unaffiliated representative may unlawfully alter the balance, while the same form of assistance to a strong organization may not. It is for this reason that the decision necessarily is an *ad hoc* one, resting on a consideration of the record as a whole.

I conclude that the assistance rendered by Respondent, under all the circumstances present here, is not unlawful for the reason that the employees' paramount rights under the Act of freedom of choice and independence in dealing with Respondent are neither undermined nor threatened.

Without question, the Committee lacks the organization and trappings of the typical labor union. Indeed, it has no organization at all and functions only on an as-needed basis. But because it lacks the organizational bureaucracy, there apparently is no need for the imposition of dues and other membership assessments. Its bargaining methods, however rudimentary they may be, have not been ineffective. Through bargaining, its members enjoy such benefits as dental insurance, rarely found in the typical labor agreement.

Whatever may be the *modus operandi* of the Committee, this can be said: It was conceived and selected solely by the employees, its representatives are freely chosen solely by the employees, its contract demands are framed and advanced solely by its representatives, and in its substantive activities it acts entirely independent of Respondent.

The Board decision finding employer domination in *Kux Manufacturing Corporation, etc.*, 233 NLRB 317 (1977), enforcement denied in relevant part 614 F.2d 556 (5th Cir. 1980), principally relied on by the Charging Party, is inapposite if for no reason other than the fact that the committee there was established and controlled by the employer. In this case, there is no evidence of such employer involvement.

Paragraph 12 of the amended complaint is dismissed.

### B. *The Chene Surveillance*

Store Representative Brown testified that, in early January 1980, she was using a company telephone for a personal call, without having first obtained the required permission. Her back was to Store Manager Chene who was standing on the other side of the sales counter, about 1 to 1-1/2 feet away. Brown is certain that Chene overheard the conversation which was not related to union activity. When she completed her conversation with her husband, she turned and asked Chene whether he was "baby-sitting her." According to Brown, Chene said he had been told by Company President Freedland that, whenever Brown was on the telephone, to find out with whom she was speaking and about what and to inform him of all calls relating to Local 876. Brown considered the matter "kind of a joke," but Chene, she testified, was "very serious in what he was saying."

Chene testified it was "very possible" the conversation took place, but he did "not recall the exact wording."

No violation is established, even crediting the testimony of Brown. Local 876's petition was filed on November 2, 1979, 2 months prior to this incident. No other similar incidents were testified to at this or any other store. Brown was not identified as an adherent of Local 876. This isolated incident in a multistore bargaining unit during a 10-month period between date of filing and date of hearing does not rise to the level of unlawful activity. *Kux Manufacturing Corp., supra*, 233 NLRB at 322.

Paragraph 11(b) of the amended complaint similarly is dismissed.

### C. *The Laughead Interrogation*

Early in 1980, according to the testimony of Store Representative Gingrich, Store Manager Laughead asked her if she knew anything about union activity and from what store it might be coming. She testified that the conversation occurred on the sales floor, that it was just a casual remark, and that she replied she had no idea and would not tell him even if she knew.

Laughead testified that no such conversation occurred.

No unlawful interrogation is established. The interrogation was casual and, considered both objectively and subjectively, was not coercive or intimidating. Indeed, it was innocuous at best. Again, under the circumstances of the case, this isolated question does not rise to the level of unlawful employer activity under the Act.

Paragraph 11(a) of the amended complaint is dismissed.

[Recommended Order for dismissal omitted from publication.]